IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1112 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATHOD KALYANSINH RAGHUSINH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1112 of 1992

MR AB MUNSHI for MR JAYESH M PATEL for appellants

MR KC SHAH, ld.APP for Respondent.

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 20/08/2002

ORAL JUDGEMENT

The appellants and three other persons were prosecuted for commission of the offence punishable under Sec.143, 436, 504, 427, 149 of IPC and under Sec.135 of

the Bombay Police Act. At the end of the trial, the learned Sessions Judge convicted accused Nos.3, 4, 5 and 7 (present appellants) for the offences under Sec.436 and 149 of IPC and sentenced them to suffer rigorous imprisonment for one year and to pay a fine of Rs.200/each. The rest of the accused were acquitted. The appellants were also convicted for the offences punishable under Sec.427 and 149 read with Sec.149 of IPC and convicted separately for each of the offence. The learned Judge ordered the sentence to run concurrently. The appellants have challenged the said judgment in the present appeal.

2. The complainant Raval Chhanabhai Gobarbhai was residing with his wife and children in a hut at village Khadat on the bank of river Sabarmati. He was doing agriculture and producing vegetables. One Sultansing was also cultivating vegetables and living in a separate hut. On 18.3.1987, at about 8.00 p.m., the accused along with other 25 persons had come with various weapons. They started showering abuses and damaged the crop. It is the prosecution case that original accused Nos.1 to 7 set ablaze the hut. They put fire on the belongings of the complainant. The complainant was terribly frightened and had run away. On the next day, he gave the complaint to Vijapur Police Station. The investigation was carried out and ultimately, the original accused were charge sheeted for the commission of the aforesaid offences.

The charge at Exh.4 was framed against the accused by the learned Sessions Judge, Mehsana. The accused pleaded not guilty to the same and claimed to be tried. The learned Sessions Judge, thereafter recorded the evidence of the prosecution witnesses. Original accused No.6 in his defence has examined two witnesses, namely, Ramabhai PW1-Exh.30, Dahyabhai PW2-Exh.31 and Kailashben PW3-Exh.32/

It appears that a compromise was arrived at between the parties and a purshis to that effect Exh.37 was filed before the Court. However, since the offence alleged against the accused was not compoundable, the learned Judge has kept the compromise purshis on record. After appreciating the evidence on record, the learned Judge convicted the present appellants for the offence alleged against them and passed the order of sentence as stated above.

3. In order to bring home the charge levelled against the accused, the prosecution has mainly relied upon the evidence of complainant Raval Chhanabhai

Gobarbhai, Exh.15, Sharadaben Chhanabhai, Exh.19 - wife of the complainant, and Sultansing, Exh.18, the neighbour of the complainant and Amarsinh, Exh.20.

4. I have minutely gone through the evidence of the aforesaid witnesses. On going through their evidence, it is clear that on 18.3.1987, Kediben, daughter of accused No.1 was grazing her buffaloes. While grazing, the buffaloes have damaged the vegetables cultivated by the complainant and the complainant had scolded Kediben. Kediben returned with the buffaloes thereafter. On the same night, at about 8 O'clock, all the accused with other unidentified persons gathered at the hut of the complainant. Accused Nos.1 to 3 were armed with dharias while accused Nos.4 to 7 were armed with sticks. They destroyed the vegetable crops and set ablazed the hut, with the result, the household articles like cots, mattresses, vessels etc. were burnt. The evidence of the complainant is totally corroborated by Sultansing Exh.18, the neighbour of the complainant. Nothing has been brought out in their cross examination. The version of the neighbour of the complainant is natural and there is no reason to discard his evidence. Panch Amarsinh at Exh.20 has proved the panchnama of the scene of offence. Thus, the prosecution has clearly established the case from the from the evidence of the eye witnesses, namely, the complainant Sultansing and Sharadaben and panch Amarsinh. Out of 20-25 persons who have been identified, the learned Judge was justified in establishing the presence of only seven accused. The learned trial Judge was also justified in convicting the present appellants and acquitting the rest of the accused, considering their presence and the part played by them in commission of the offence. Learned Counsel appearing for the appellants is unable to point out anything warranting me to take a different view than the view taken by the learned Judge. Thus, considering the entire evidence on record, I am of the opinion that the prosecution has established the offence levelled against the present appellants and therefore, the learned Judge was justified in convicting the appellants for the offences under Sec.436, 427 read with Sec.143 and 149 of IPC. I accordingly convict all the appellants for the said offences.

5. Learned Counsel appearing for the appellants, however, submitted that a lenient view is required to be taken against the appellants as far as the sentence part is concerned. He has narrated the following circumstances for taking a lenient view in the matter:

A settlement at Exh.37 has already been filed

before the trial Court whereby the complainant has been paid an amount of Rs.3,000/- by way of compensation. The parties are residing peacefully for all these years and that no untoward incident has taken place. Much time has elapsed after the incident.

6. The appellants as well as the original complainant Raval Chhanabhai Gobarbhai are present in the Court. Raval Chhanabhai for the purpose of his identification, has shown me the identify card issued by the Election Commission. He has stated before me that he has no grievance against the appellants and that he is residing in the village peacefully.

Considering the facts and circumstances of the case, I am of the opinion that the accused, even though appellants have committed a very serious offence, under ordinary circumstances, no leniency is required to be shown as far as the sentence is concerned, however, in view of the fact that the incident had taken place way back in the year 1987 and that the appeal is being heard after about 15 years, if at this stage, they are sent to jail, it will certainly affect their life and considering the fact that the complainant has forgiven them and that no untoward incident has taken place between the parties. Under the circumstances, the ends of justice would be met instead of sending them to jail, a substantial amount of fine is imposed upon them and the complainant is sufficiently compensated.

7. In the result, the appeal is partly allowed. The appellants are convicted for the offences under Sec.436 and 149 of IPC and they are sentenced to suffer imprisonment till rising of the Court and to pay a fine of Rs.2,500/- (Rupees Two thousand and five hundred only) each, in default to undergo rigorous imprisonment for four months. The appellants are also convicted for the offences punishable under Sec.427 and 143 of IPC. However, there will not be any separate sentence for the said offences. The appellants are granted 15 (fifteen) days' time to deposit the amount of fine before the trial Court. On depositing the said amount of fine, the original complainant shall be paid Rs.7,000/- (Rupees Seven thousand only) by way of compensation after proper verification. The rest of the amount shall go to the State Exchequer.

(Kshitij R. Vyas, J.)

FURTHER ORDER:

The appellants have already undergone the sentence of imprisonment till rising of the Court today,

i.e. 20-8-2002.

(Kshitij R. Vyas, J.)
Sreeram.